

REMARKS

Claims 30 to 32 are added, and therefore claims 12 to 19 and 26 to 32 are currently pending and being considered in the present application.

In view of the following remarks, Applicants respectfully submit that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

This RCE Amendment is being filed in lieu of the Appeal Brief first due on December 28, 2009.

Claims 12 to 19 and 26 to 29 are rejected under U.S.C. § 112, first paragraph, as to the written description requirement.

To satisfy the written description requirement, “a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention”. M.P.E.P. § 2163 (citing *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003); *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563, 19 USPQ2d 1111, 1116 (Fed. Cir. 2004)). Here, the claimed subject matter includes estimating certain information only in predetermined driving situations. This is supported by the Specification, as explained herein.

Still further, as stated by the Board in *Ex parte Harvey*, 3 U.S.P.Q. 2d 1626, 1627 (Bd. Pat. App. Int. 1986) (emphasis added, citations omitted):

Compliance with the written description requirement of Section 112 only requires that appellant's application contain sufficient disclosure, *expressly or inherently*, to make it clear to persons skilled in the art that appellant possessed the subject matter claimed. The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession of the claimed subject matter, rather than the presence or absence of literal support in the specification for the claimed language.

Likewise, as stated by the Board in *Ex parte Sorenson*, 3 U.S.P.Q. 2d 1462, 1463 (Bd. Pat. App. Int. 1987) (emphasis added):

[W]e are mindful that appellant's specification need not describe the claimed invention in *ipsis verbis* to comply with the written description requirement. *The test is whether the originally filed specification disclosure reasonably conveys to a person having ordinary skill that applicant had possession of the subject matter later claimed.* . . . Moreover, the Examiner has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in appellant's specification disclosure a description of the invention defined by the claims.

In particular, the Sorenson Board, noting that the examiner only essentially stated that the claim expressions at issue did not “appear in the original disclosure” and that the claim expressions were therefore “not adequately supported by the few specific compounds in the specification”, found that the examiner had not met his initial burden of “presenting evidence why a person having ordinary skill in the art would not recognize in appellant's specification a description of the invention defined by the claims” — and that the “only reasoning presented” that the Board could discern was an “example of *ipse dixit* reasoning, resting on a bare assertion by the Examiner”.

As to the claim 12 feature of “predetermined driving situations”, it is respectfully submitted that one of skill in the relevant art would understand that the inventors had possession of a method for a rollover stabilization of a vehicle in a critical driving situation, the method including the feature of estimating, only in predetermined driving situations, information from a relationship between a steering variable and a roll variable, the information relating to a rollover tendency of the vehicle and being taken into account in a scope of the rollover stabilization.

This claim feature is described, for example, at page 4, lines 21 to 24 (“[t]he rollover tendency is preferably only estimated in predetermined driving situations, which satisfy, for example, certain specified conditions regarding the steering angle, transverse acceleration or another variable describing the lateral-notion dynamics of a vehicle”), and in further detail at page 7, line 26 to page 8, line 2 (“[t]he estimation method is only implemented in predetermined, favorable driving situations, i.e. in those situations that are very meaningful to the estimation. For this purpose, fuzzy algorithm 8 is supplied specified, driving-dynamics variables G, with the aid of which the driving situation may be analyzed. If driving-dynamics variables G, such as a transverse acceleration or a steering speed, satisfy at least one specified condition, then fuzzy algorithm 8 is activated or deactivated”).

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RCE Reply to Final Office Action of September 8, 2009

(in lieu of Appeal Brief first due on December 28, 2009)

Therefore, the specification does sufficiently describe in what manner the estimation process can establish which predetermined driving situations are deemed to be favorable or meaningful to the estimation process -- i.e., using fuzzy algorithm 8 supplied with specified, driving-dynamics variables G. The Office Actions to date have yet to explain, as required, why a person having ordinary skill in the art would not recognize in this specification language a description of the invention defined by the claims. In fact, the language in question refers to notions which are well known in the art and would be immediately recognized by a person having ordinary skill in the art.

Furthermore, regarding the assertion in the Advisory Action that limitations from the specification are not to be read into the claims, claim 29 includes language that further clarifies the “only in predetermined driving situations” language, and although the present rejections may not be agreed with, new claims 30 to 32 have been added to further define the claimed subject matter.

Furthermore, as explained above, the assertions of the Office Actions to date regarding language from the specification do not address the sufficiency of the written description of the claim features.

It is therefore respectfully submitted that the present application does satisfy the written description requirement of 35 U.S.C. § 112. Accordingly, it is respectfully requested that the “written description” rejections be withdrawn.

Claims 12 to 16 and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,438,463 (“Tobaru”) in view of U.S. Patent Application Publication No. 2002/0069006 (“Faye”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and

not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 12 is directed to a method for rollover stabilization of a vehicle in a critical driving situation, including estimating information from a relationship between a steering variable and a roll variable, the information relating to a rollover tendency of the vehicle and being taken into account in a scope of the rollover stabilization -- only in predetermined driving situations. The Tobaru reference at column 12, line 64 to column 14, line 55 merely refers to detecting the steering angle δ and a change in the threshold value lines S based on the detected steering angle. In contrast, the estimating of claim 12, as presented, is only implemented in predetermined driving situations.

The Office Actions to date conclusorily assert that this feature somehow corresponds to the change of the threshold value lines S of the Tobaru reference based on the steering angle and critical rolling angular speed. It is believed and respectfully submitted that changing the threshold value lines S does not, however, disclose or suggest restricting any estimation to predetermined driving situations, as provided for in the context of the presently claimed subject matter. The change of the threshold value lines S is not disclosed to have any impact on the implementation of any estimation.

In particular, the Tobaru reference does not disclose, or even suggest, estimating information from a relationship between a steering variable and a roll variable, the information relating to a rollover tendency of the vehicle and being taken into account in a scope of the rollover stabilization, *in which the estimating is only performed in predetermined driving situations*. In the Advisory Action it is asserted that the broadest reasonable

interpretation of this claimed limitation does not preclude the situation wherein there is no steering or roll involved and thus the rejection is still proper. However, applicants strongly disagree with any interpretation of “**only** in predetermined driving situations” that would include all driving situations as is the case with the interpretation proposed in the Advisory Action.

Since the Faye reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference, the combination of the Tobaru and Faye references does not disclose or suggest all of the features of independent claim 12, as presented, so that claim 12 is allowable, as are its dependent claims. Withdrawal of the present rejections is therefore respectfully requested.

Claims 17, 18, and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tobaru reference, as modified by the Faye reference, and further in view of Japanese Patent Application Publication No. JP63116918 (“Takumi”).

Claims 17, 18, and 27 depend from claim 12, and they are therefore allowable for essentially the same reasons, since the secondary references do not cure -- and are not asserted to cure -- the critical deficiencies of the primary reference. Withdrawal of the present rejections is therefore respectfully requested.

Claim 19 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tobaru reference, as modified by the Faye and Takumi references, and further in view of U.S. Patent No. 6,498,976 (“Ehlbeck”).

Claim 19 depends from claim 12, and it is therefore allowable for essentially the same reasons, since the secondary references do not cure -- and are not asserted to cure -- the critical deficiencies of the primary reference.

Further, claim 19 includes the feature of weighting a rollover indicator by a weighting function indicating a quality of an estimation of the rollover indicator. The cited portion of the Ehlbeck reference, however, merely refers to a rollover score being compared to multi-tiered threshold values, in an evaluation of the rollover risk level. Even if the level of the risk may be considered -- the quality of the calculation is not considered.

In contrast, the weighting function of claim 19 is used to indicate a quality of an estimation of the rollover indicator. This weighting function indicates whether an estimation

is reliable -- and not whether the estimation indicates rollover risk. For example, as disclosed in the Specification at page 8, lines 3 to 5, this weighting function may analyze the reliability of the rollover indicator by taking into account the number of learning events that have led to this estimation and/or the period of time during the trip that went into the estimation.

It is respectfully submitted that claim 19 features a weighting function indicating a quality of an estimation of the rollover indicator. Read broadly, the quality of an estimation is not described by threshold values of the estimation, as asserted in the Final Office Action. The term “quality” of claim 19 is descriptive of the nature of the estimation (in particular, the reliability described in the above citation to page 8, lines 3 to 5 of the Specification), whereas the Ehlbeck reference describes the amount of the estimation, in comparison to threshold values. Because the threshold values of the Ehlbeck reference do not indicate the quality of an estimation, the Ehlbeck reference does not disclose, or even suggest, the feature of weighting a rollover indicator by a weighting function indicating a quality of an estimation of the rollover indicator, as provided for in the context of the presently claimed subject matter.

For all of the foregoing reasons, the combination of the Tobaru, Faye, Takumi and Ehlbeck references does not disclose, or even suggest, all of the features of claim 19, so that claim 19 is allowable. Withdrawal of the present rejection is therefore respectfully requested.

Claims 26 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tobaru reference, as modified by the Faye and Takumi references, and further in view of the Ehlbeck reference.

Claims 26 and 28 depend from claim 12, as presented, and they are therefore allowable for essentially the same reasons, since the secondary references do not cure -- and are not asserted to cure -- the critical deficiencies of the primary reference. Further, claims 26 and 28 contain features like those of claim 19, and they are therefore allowable for essentially the same reasons as claim 19. Withdrawal of the present rejections is therefore respectfully requested.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by

that Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 12 to 19 and 26 to 29 are allowable.

New claims 30 to 32 do not add any new matter and are supported by the present application, including the specification. As explained above, claim 2, as presented, includes language that further defines the "only in predetermined driving situations" recitation, and while the present rejections may not be agreed with, new claims 30 to 32 further define the claimed subject matter. Claims 30 to 32 depend ultimately from claim 12, and they are therefore allowable for the same reasons.

Accordingly, claims 12 to 19 and 26 to 32 are allowable.

CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

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